

REMARKS/ARGUMENTS

Claims 1, 4, 5, 6, 8, 9, 10, 12, 21, 24 and 27 have been amended. Claims 2, 3, 17, 19, 25 and 26 have been canceled. Claims 1, 4-16, 18, 20-24, and 27-37 remain in this application.

Rejections Under 35 U.S.C. § 112

Claims 4, 5, 6, and 21 have been amended by indicating solid fat content at certain temperatures. Support for these amendments is at page 5, lines 9-12 of the specification.

Specification

In the specification, the paragraph on page 5, line 4 beginning with "In an important..." has been replaced with an amended paragraph to correct a contradiction between the example 1 and the invention summary. This paragraph is now consistent with the data set forth in Example 1 of the application.

Art Rejections

The claims as now amended are directed to a multilayer moisture barrier that is effective for preventing moisture migration and for providing acceptable organoleptic properties. The multilayer moisture barrier includes at least one lipid layer and at least one hydrophobic barrier layer. To provide an effective moisture barrier with acceptable organoleptic properties, the lipid layer of the moisture barrier includes certain amounts of microparticulated high melting lipid in combination with an edible low melting triglyceride blend. The microparticulated, high-melting lipid is effective for promoting the formation of small, fat crystals (from the triglyceride blend during cooling) that effectively immobilize any remaining liquid oil fraction of the triglyceride blend, thus preventing liquid oil from draining from the fat crystal network. During subsequent storage, the microparticulated high melting lipid is also effective in stabilizing a three dimensional solid fat crystal network made of numerous small fat crystals. Presence of smaller fat crystals provides a better moisture barrier.

None of the cited references alone or in combination describe or suggest an edible multilayer moisture barrier with microparticulated high melting lipid and edible low melting triglyceride as now claimed.

Rejection Under 35 U.S.C. § 102 over U.S. Patent No. 5,147,670 to Cebula et al.

The '670 patent does not describe or suggest a multilayer moisture barrier that includes a lipid layer that contains microparticulated lipid in combination with a triglyceride blend as claimed.

The '670 patent describes an edible diffusion-retarding fat-based film for food products containing polyol fatty acid polyesters particularly useful for confectionery applications. These polyol fatty acid polyesters are derived from aliphatic compounds which comprise at least four free hydroxyl groups, based on sugar polyols. Polyol fatty acid polyesters do not have the same chemical structure as that of triglycerides and would not provide the same melting profiles and such barrier would not provide organoleptically acceptable properties. All of the elements as now claimed, specifically microparticulated lipid in combination with a triglyceride blend, are not found in the '670 patent, hence, the '670 patent does not anticipate the present claims.

Rejection Under 35 U.S.C. § 103

1. Rejections over the '670 patent in view of U.S. Patent No. 3,997,674 to Ukai et al.

The combination of the '670 patent and the '674 patent does not describe or suggest a multilayer moisture barrier that includes a lipid layer that contains microparticulated lipid in combination with a triglyceride blend as claimed.

As indicated above, the '670 patent does not include any description or suggestion of microparticulated lipid in combination with a triglyceride blend. The '674 patent does not provide those missing elements.

The '674 patent is not a moisture barrier but is a coating composition that includes an aqueous dispersion for the preservation of agricultural products. The '674 dispersion is an aqueous solution of a water-soluble high polymer, such as polysaccharides, with microparticles of a hydrophobic substance (waxes) and an emulsifier as the dispersion mechanism. Hence, the wax or hydrophobic layer of the '674 patent is a dispersion and not a separate layer as claimed. The '674 patent provides no description or suggestion to form a multilayer coating where a lipid layer includes microparticulated lipid and a triglyceride blend as claimed.

2. Rejections over the '670 patent in view of U.S. Patent No. 4,671,963 to Germino et al, U.S. Patent No. 5,130,151 to Averbach, and U.S. Patent No. 5,520,942 to Sauer et al..

The combination of the '670, '963, '151 and '942 patents does not describe or suggest a multilayer moisture barrier that includes a lipid layer that contains microparticulated lipid in combination with a triglyceride blend as claimed.

The '670 patent describes diffusion-retarding fat-based film for food products containing polyol fatty acid polyesters. No microparticulated lipid in combination with a triglyceride blend as claimed is described or suggested.

The '963 patent has nothing to do with preventing moisture migration between foods but describes a coating for foodstuffs used to maintain crunchiness. The '963 patent describes a method for treating foodstuffs with alkaline metal salts of stearic acid in a fat or oil by spray coating or immersion to maintain crunchy and chewy textural characteristics in the presence of moisture. The '963 patent provides no suggestion as to microparticulated lipid or that its stearate containing coating could be combined with an edible low melting triglyceride blend as claimed.

The '151 patent does not describe a multilayer coating or microparticulated lipid as claimed. The '151 patent is directed to a combination of oleaginous material (oil, fat, synthetic oil-like substances) and wax. Hence, the '151 patent alone or in combination with any of the cited references does not describe or suggest a multilayer coating that includes a lipid layer that is a combination of microparticulated lipid and a triglyceride blend.

The '942 patent does not describe microparticulated lipid but describes a supercritical fluid which acts as a carrier for an additive. One of many such additives described may include a moisture barrier (see column 2, lines 28-37). The moisture barrier can include waxes, shellacs and hydrocolloids (see column 8, lines 49-63). One of ordinary skill reading the '942 patent would have no motivation to select high melting lipids and especially microparticulated high melting lipids to use in a moisture barrier as claimed. Further, since the '942 patent is directed to using supercritical fluids as a carrier, one of ordinary skill would have no reason to combine microparticulated lipid and a low melting triglyceride blend as claimed.

Double Patenting (35 U.S.C. § 101)

A Terminal Disclaimer is enclosed to overcome the provisional obviousness-type double patenting rejection.

U.S. Application No. 10/826,709
Reply to Office Action dated September 22, 2004

CONCLUSION

Applicants respectfully submit that all pending claims as amended are in condition for allowance and respectfully request that this case be passed to issuance.

The Commissioner is hereby authorized to charge any additional fees which may be required in the Application to Deposit Account No. 06-1135.

Respectfully submitted,

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